HUMAN EVENTS

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News Section *Printed in Two Sections*

Favorite Son Bandwagon: Senator Bricker of Ohio set the favorite son pattern of the informal conservative coalition which seeks to checkmate the drive of the Palace Guard for the nomination of a hand-picked New Deal Republican — if the President does not run.

Bricker's announcement said: "I am privileged to join with other Ohio Republicans in restating our loyalty to President Eisenhower and our desire that he stand for re-election if, in his own good judgment, he should do so. By their official action [naming Bricker as a favorite son], Ohio Republicans have demonstrated that the legal requirements of the primary election law can be met in a way that is consistent with loyalty to the President and that still does not weaken Ohio's voice in the Republican National Convention nor embarrass the President with the demands for an untimely decision. If Mr. Eisenhower decides not to run, the Ohio delegation will meet as often as necessary to determine to whom and in what measure to give its support."

Since the first presidential primary will be in New Hampshire and will have great psychological importance, conservatives all over the country are writing to Senator Styles Bridges (Senate Office Bldg., Washington, D. C.) asking him to file as the state's favorite son. Otherwise — it is feared — Sherman Adams, former New Hampshire governor, will stack the delegation with "liberal" delegates willing to vote as he dictates.

Warren: Whatever the truth about the presidential intentions (if any) of Chief Justice Warren, his election chances (if he should run) are the subject of much skeptical discussion in the Capital. This week this sort of talk was given a new fillip by a statement by Joseph L. Rauh, President of the Americans for Democratic Action, the Fabian Socialist organization of the country. Mr. Rauh said that Americans for Democratic Action would welcome the candidacy of Chief Justice Earl Warren for President next year. "It would be," said Rauh, "a great luxury for the American people to have a choice between Chief Justice Warren on the Republican ticket and such a man as Stevenson, Harriman or Kefauver on the Democratic ticket. The American people couldn't lose either way."

Rauh said that if Warren were to run against such a conservative Democrat as Ohio's Governor Frank Lausche, "I have no hesitancy in predicting we would support the Republican ticket." If the lineup turns out to be Warren versus Adlai Stevenson, Rauh said, it is difficult to predict what ADA would do. It might back one of the men, neither or both, he said.

Mrs. Eleanor Roosevelt this week strongly endorsed Warren for the GOP nomination.

Widespread publicity of these statements make more certain, it is believed here, the conviction of conservative Republicans that the Chief Justice is scarcely their man and political dopesters predict that nomination of Warren would promote a large-scale "stay-at-home" movement among traditional Republican voters.

Another drawback to nominating Warren, it is emphasized, arises from the Southern political situation. In the last two general elections, Southern states broke away from their traditional Democratic allegiance. That could not be repeated, it is asserted, if Warren were to be the GOP candidate. For, Southerners blame the troubles they have suffered from the de-segregation decree of the Supreme Court on that Court's Chief Justice.

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Therefore, Southerners would close ranks behind even the most "liberal" Democratic candidate. Consequently, the Democratic Party would start the election campaign with a sure backlog, from the South and border states, of 176 electoral votes — no mean advantage.

Morse of Oregon: Senator Morse's friends report that he is concerned about his chances of re-election next year as a Democrat. The ex-GOP senator from Oregon is worried because his grass roots surveys show that rank-and-file Democrats distrust this new convert to the Democratic party. Recalling that he once posed as a faithful Republican, they believe that, if elected as a Democrat, he would desert again if the whim struck him.

Morse pinned his election hopes on posing as a public power champion. This issue has been deflated by recent developments, including an election in neighboring Washington in which the voters overwhelmingly favored private in preference to public power. (See December 3, News Section.) Earlier in the year, Senator Neuberger debated the pro-public power side of the issue with Republican Congressman Coon throughout Eastern Oregon and — according to wide judgment — lost the argument.

Both friends and enemies agree that, for the first time, Morse is facing first-class opposition. He had no real primary or general election opposition when he ran for the Senate in 1944 on a platform which was scarcely pro-labor or pro-New Deal. In the 1950 election, his primary and general election opponents were feeble.

In 1956, however, Morse faces the opposition of an aroused Republican party eager to retire the Senator they call "a Benedict Arnold" and "turncoat." The caliber of the opposition can be gauged by the fact that Morse has leaned over backward not to attack the Oregon Republican state chairman, Wendell Wyatt. The chairman is one of Morse's former law school students and is a long-time personal friend. One of the youngest GOP chairmen, he is 37, a World War II Marine pilot, an ex-FBI agent and a strong believer in the precinct organization method of winning elections.

Straw In The Wind: Observers who attended the American Farm Bureau Federation meeting last week in Chicago report that, for the first time in many years, there took place a floor fight on the report of the Resolutions Committee. The report favored the flexible-support policy of Secretary of Agriculture Ezra Benson. It was challenged on the floor by a group of Southern delegates who favored the "rigid 90 per cent of parity" formula. The latter were defeated by majority vote. But, observers marvelled at the fact that the fight occurred — usually all such conflicts are smoothed over in the Resolutions Committee, long before the report is made to the floor. Those who have long experience with the proceedings of farm organizations conclude from all this that "something is stirring" and that it will be reflected in politics in the next election year.

Russian Aid: Countries of Asia and Africa seem to have prompted efforts in Washington to speed up loans and gifts to "threatened" areas. While Messrs. Khrushchev and Bulganin were making the headlines with their Asiatic tour, news reports say that Washington has decided to back the huge Aswan High Dam on the Upper Nile, altogether a $1⅓ billion project. But foreign policy analysts say we are responding to a false threat.

Facts show that although Moscow has long been propagandizing its willingness to share its last crust with less developed nations, the latter have received from Russia virtually nothing. Senator Mike Mansfield, following a survey of Soviet technical aid to Asia, reported "Soviet performance has not lived up to Soviet promises," in the USSR trade agreement of April, 1954 with Lebanon. The pact envisaged, during 12 months, a $4.6 million goods movement in each direction. But in all of 1954 Lebanon was able to buy only $57,000 of Soviet goods and was able to sell only $4,000 to Russia! In July, 1954, a Russian-Uruguayan agreement was announced. It called for a $20,000,000 exchange in 12 months. During 18 months before and after the announcement Russia took $26,500,000 of Uruguayan exports; Uruguay was able to buy $28,000 of Russian goods. In this way various countries are piling up credits with Russia.

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Indiana Story: The Federal Social Security System has become such a sacred cow around Washington that few question either its fundamentals or its execution. In recent weeks, however, news comes from Indiana which suggests that people in the Middle West, are not nearly so convinced of the validity of Federal security as are those in the bureaucratic center of Government. In the Hoosier state, school teachers have been called upon to vote for or against the integration of their state's school retirement pension plan with the Federal Social Security system. Both Indianapolis papers found little to say in favor of the proposed change.

The Indianapolis *Times* pointed out that under the present state program pensions are "figured on a sound actuarial basis, according to how much they paid into the fund while they worked." It is backed by a reserve fund adequate to meet all future claims. Also, like all genuine insurance it belongs to the beneficiary, regardless of what other income he may get. But "Federal Security," the *Times* warns Hoosiers, is something different.

Such "security" pays whatever retirement pensions Congress may find politically expedient at the moment — it has been changed several times, the *Times* remarks. The amount of the pension has little if any relation to what the beneficiary has paid into it, but on the contrary is heavily "rigged" to provide more for those who have paid the least, and is "adjusted" on the basis of "need." It limits any other income the recipient may earn. There is no reserve fund against future claims — everything paid in has been spent as fast as it came in.

The Indianapolis *Star* observes that, under the proposed change, the fate of the local school teacher would be up to the Federal Congress in Washington. "With the necessity of petitioning Congress for their future welfare, teachers would also face the necessity of pleasing Congress. Yet they would have lost their individuality which is theirs in relation to their state system. They would have traded independence for the illusion that Federal help is something for nothing."

Letter from JOHN O'DONNELL, Columnist, New York *Daily News*: "As one of your oldest subscribers, it's high time that I should express my thanks for the assistance that HUMAN EVENTS has been to me in warmer terms than the cold, matter-of-fact credit line you receive when I have used your excellent material in my 'Capitol Stuff' column. HUMAN EVENTS is always among the first to be plucked from the flood of mail that crosses the desk of every Washington reporter. Only the pay check challenges its priority. It has been valuable to me because it has come up with important exclusive reports; its interpretation of the Washington scene has been penetrating and wise; and a glance at the back numbers tells how honest has been this journalistic compass in pointing the direction of our national drift and projecting a picture of the shape of things to come which usually comes true."

Federal Aid and Federal Control: President Eisenhower told the White House Conference on Education that education "should be under the control of the family and the locality. It should not be controlled by a central authority."

Any seasoned Washington observer knows that neither the federal bureaucracy nor Congress long passes out funds without conditions.

Two examples: one in education, the other in housing.

The Smith-Hughes Act providing federal aid to vocational education was passed in 1916. During the period prior to its passage, proponents insisted time and time again that "federal aid will not mean federal control."

But the federal regulations that must be met by the states and local school boards have increased year by year until now the listing of the specific requirements fills a book of 108 pages. (*Administration of Vocational Education*, price 30 cents, U.S. Government Printing Office, Washington, D. C.) Federal dictation would be assured by one sentence (page 4): "Each state is required to submit a plan which must meet with the approval of the Federal Office of Education."

The Federal public housing program, first enacted in 1935, also shows the inevitable course of Federal aid.

Subsidies, loans and grants are available only to cities which "develop a workable program for urban renewal." Anonymous officials of the Hous-

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ing and Home Finance Agency (HHFA) must be satisfied that a city has:

1. Adopted comprehensive building codes and ordinances respecting the protection of health in housing.

2. Developed a "comprehensive plan for community development."

3. Made adequate analyses of all the separate neighborhoods within their boundaries.

4. Set up an adequate administrative organization for dealing with local housing problems.

5. Demonstrated their financial capacity on housing improvement.

6. Agreed to re-house "displaced families."

7. Provided "full-fledged citizen participation" in city planning, including representation for minority groups.

These specifications, amounting to nothing less than full Federal central control of municipal planning, were enacted by Congress as part of the Housing Act of 1954.

Opponents of Federal aid say that if the trend toward Federal financing of state and local activities is not soon reversed, it won't be long before we shall have an all-powerful central government with regional offices, which may or may not be called states. The battle for state and local responsibility for schools is a last-ditch fight to preserve the basic principle of our system of government — separation of powers both functionally and geographically.

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Over-Employment: The price of over-full employment was not much in the minds of backers of the Full Employment Bill which, after major alteration by Senator Taft and others, became the Employment Act of 1946. That there is such a thing as over-full employment, where jobs go hunting the man, and that over-full employment entails inflation has for some time been appreciated in Britain. The fact that brimful employment tends to produce inflation of prices and thus to impair the soundness of the currency is now becoming better understood in this country. Such employment conditions bring not only the full dinner pail but demands for higher wages and all sorts of fringe benefits.

It is interesting to see the dangers of over-full employment acknowledged even by liberal economists of the New Deal stripe. Thus, Prof. Theodore J. Kreps — a staff member of the pre-war TNEC (Temporary Natural Economy Committee) and later staff director of the Joint Economic Committee when Sen. O'Mahoney was its chairman — lists over-full employment today as "one of the roadsigns" portending possible malfunctioning of the economy. For steady growth, he says, the economy needs employment flexibility, adding: "Postwar experience indicates that inflation of wages, costs and prices begins when a level of more than 95% employment is reached. In September, for example, there were but 3.2% of the work force unemployed . . . Wages tend to increase faster than productivity.

"Not only do high labor turnover and voluntary quits increase costs but there is the additional expense of overtime . . . Anticipating such incremental costs, producers raise their prices. Though profits on goods already processed at lower costs receive a temporary fillup, volume dwindles as goods are priced out of the market. The economy hits a dip in the road."

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Article Section

"THE RIGHT TO INTERPOSE"

An Old and Honored Doctrine Gives the People of the Several States a Chance To Regain Effective Control of Their Constitution

By JAMES J. KILPATRICK

IT HAS BEEN 157 years since Jefferson and Madison put the doctrine in words, 96 years since Wisconsin last asserted it formally, but the historic right of a State to interpose its sovereignty against Federal encroachment is gaining new consideration across the South today.

What is the nature of this right? It is summed up tersely in the Virginia Resolution of 1798: In the event of a "deliberate, palpable and dangerous" exercise by the Federal Government of powers not granted to it by the Constitution, the States who are parties to the Constitution "have the right, and are in duty bound, to interpose for arresting the progress of the evil and for maintaining, within their respective limits, the authorities, rights and liberties appertaining to them."

In the view of many Southerners, just such a palpable infraction of the Constitution occurred in May, 1954, when the Supreme Court reversed itself and cast aside a Constitutional construction that had stood for more than 80 years. Yet support for "interposition" is coming not merely from persons who advocate racially separate public facilities, but significantly from many persons remote from the school controversy. They see in this proposal for interposition a chance — perhaps the last chance — for the people of the several States to regain effective control over their Constitution. Searching for the missing check-and-balance against the Supreme Court, they believe they may have found it here.

How seriously the old reserved powers of the States have declined, readers of HUMAN EVENTS well know. One by one, functions and obligations that formerly were the jealously guarded prerogatives of the States have vanished down the gullet of our Federal Enceladus. Today it is difficult to recognize, in a bloated Constitution, former limitations upon the power to "regulate commerce," the old intention of the noun "manufactures." Numbed by the narcotic of "Federal aid," the people have docilely assented to massive usurpation of authority. We have traded off our once reserved powers for a clutch of public housing units and a free hot lunch. What is it that the vintners buy, it may be wondered anew, one half so precious as the stuff they sell?

Can this rapid destruction of State powers be brought to a pause? And if so, how? After all these years, can the voice of the Founding Fathers again claim an audience? Surely the doctrine of State interposition merits, at the least, a sober examination in any study of Constitutional theory. Some time profitably may be spent in considering the reasoning behind this doctrine, its application in the past, the influence (if any) of the Civil War upon it, and finally, in inquiring whether the right might be effectively asserted today.

THE REASONING behind this doctrine is clear enough. Calhoun expounded it with great cogency in his Fort Hill Address of July 26, 1831, and again in a powerful letter to South Carolina's Governor Nicholson the following year. The debates between Hayne and Webster, and between Calhoun and Webster, offer a student full exposition of the issue.

The argument is this: The Constitution agreed to by the Convention of 1787, as a successor to the Articles of Confederation, was not a compact entered into by "we the people" as a mass of people, acting as one from New Hampshire

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to Georgia. It was rather a compact entered into by the several States as sovereign political entities. The people of these areas had been organized as colonies; they declared themselves in 1776 "independent States;" they united in a confederacy in 1781 simply as a cooperating group; still separate and sovereign, the people of the respective States then formed in 1787 a broader compact. But the instrument itself declared its provisions binding only "between *the States* so ratifying," and ratification was not achieved in one great popular referendum, but by conventions in each State.

Under the compact, the States delegated certain of their powers — but only certain of their powers — to the central government they created to serve their mutual interests. Recognizing the immense disparity of local interests that could best be served by local governments, they carefully enumerated and limited the powers they surrendered in the act of Union. And lest this grant be misunderstood, they insisted upon an amendment spelling it out, that powers not delegated by the Constitution to the United States, nor prohibited by the Constitution to the States, were reserved to the States respectively, or to the people. They carefully preserved the sovereign power of amendment to the Legislatures of not fewer than three-fourths of the States.

THE FOUNDING FATHERS foresaw that disagreements would arise. They vested in the newly created Supreme Court authority to determine controversies "between two or more States," or between "a State and foreign states." But when it was suggested at Philadelphia that the Court's jurisdiction also be extended to embrace controversies between a State and the Federal Government, the suggestion was explicitly rejected. These sagacious men saw clearly that in cases of contested power, this would be to put the creature superior to the creator, the servant above the master. It is one of the great misunderstandings of our history that the Supreme Court has come to be regarded as the supreme arbiter of all issues that may be asserted *between a State and the general government.* The Court is a *part* of the general government, one of three co-equal branches thereof. It is a most "audacious" proposal, as Virginia's Governor Littleton Waller Tazewell termed it in 1833, to suggest that the government created by the States alone can decide upon what powers the States have surrendered to it. But the Supreme Court has rarely lacked for audacity.

This is not to suggest that the Court has no powers to construe the Constitution; of course it has. It would have been meaningless to vest the Court with jurisdiction to hear "all cases in law and equity arising under this Constitution" if the Court, in applying the Constitution, were not to interpret doubtful provisions. So long as these constructions are generally acceptable, State Legislatures may give tacit assent to Constitutional evolution simply by remaining quiet.

But it can never have been intended to give the Court power to make radical changes in Constitutional constructions, subject to no effective check by anyone. Surely it is reasonable to suppose that if a President can commit an unconstitutional act, and the Congress can commit an unconstitutional act, the Supreme Court, composed of men no less fallible, also may commit an unconstitutional act. And if the *only* way such an infraction can be corrected is by declaring that "the people can always amend the Constitution," no immediately effective remedy is provided. It was (of all people) Justice William O. Douglas who once warned of the "instability" that is created when a judiciary with life tenure "seeks to write its social and economic creed into the Charter." After all, said he, "it must be remembered that the process of Constitutional amendment is a long and slow one."

May it not be suggested, then, that a more direct check must be available against judicial usurpation? If a Court created by the States violates the compact to which the States have assented, who has a better right to charge a violation than one or more of the States? And if such an infraction is charged, who is to be the umpire? Where does arbitrament lie? Obviously, it cannot lie with the Court itself; *it can lie only with the States.* And in the case of a major infraction, is it not reasonable to submit that enforcement of the questioned mandate should be stayed, as in other appeals to a tribunal of last resort, until the ultimate arbiter has resolved the issue?

As Jefferson and Madison envisioned the problem, grave questions of contested power would not often arise. "In cases of little urgency or importance," said Jefferson, "the prudence of both parties will keep them aloof from the questionable ground." The right of State interposition, as they saw it, was to be reserved only for those "great and extraordinary cases" which "deeply and essentially" affect a State's most vital interests. But if a State should conclude that a grave infraction of the compact has oc-

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curred, it not only has the right "but is in duty bound" to interpose. And the sister States, if they are appealed to, have a corresponding duty to resolve the controversy, and put the issue at rest.

It is objected, of course, that this system admits a right to each of the 48 States to declare some decree of the Supreme Court unconstitutional, and to demand that a disputed issue be put at rest before the contesting State will recognize an obligation to comply. It has been said that this is to propose "government by caprice." But it may be asked, what could be more capricious than government by a Court that has reversed itself 36 times in the past 18 years? And it may be asked also, if constructions placed upon the Constitution by the Court are *not* agreeable to at least three-fourths of the States, why should such construction be accepted? Why should aggrieved States remain silent?

INTERPOSITION, pursuant to this approach, has taken different forms. Georgia, in the 1790's, believed the Supreme Court had exceeded its jurisdiction in a claims case; thus Georgia flatly refused to pay the claim (the Georgia House even passed a bill providing that any marshal who attempted to enforce the Court's order would be hanged), and took the issue to the country. The result was the Eleventh Amendment, declaring Georgia right and the Court wrong.

In 1798 and 1799, when the Federalists' Sedition Act aroused great resentment, Kentucky and Virginia interposed with firm protests; their resolutions asserted the unconstitutionality of the Act, but Madison felt it necessary to do no more than to voice a protest. The object, he said, was only "to excite reflection." But he added cryptically that "farther measures" could have been taken if necessary.

In 1814, the Hartford Convention in New England again asserted the right of interposition, but Jackson's victory at New Orleans and the Peace of Ghent made further action unnecessary. Following the Tariff of Abominations in 1828, Southern States erupted with powerful protests against the abuse of Federal powers. South Carolina's Nullification Convention of November, 1832, is well known, as is Jackson's arrogant proclamation of December 10; but what is often underestimated, by those who argue that Calhoun was totally defeated, is the effect of South Carolina's militancy in winning Clay's revision of the tariff.

For 27 years thereafter, it appears, the right of interposition was not asserted. Then Northern States, where abolitionist sentiment in the 1850's ran as strong as segregationist sentiment runs in the South a century later, passed a series of Personal Liberty Laws in direct opposition to acts of Congress and to decrees of the Supreme Court. In 1859, Wisconsin tangled with the Supreme Court and revived the very wording of Jefferson's doctrine of 61 years before. The Wisconsin Assembly not only reasserted the right of interposition, but resolved that a "positive defiance [of the Court] is the rightful remedy."

Since then, other instances have arisen in which States have challenged the Supreme Court (Iowa's defiance in a series of railroad land grant cases in the 1880's provides an interesting history), but interposition, as such, has lain dormant. This quiescence gives rise to the argument that "the Civil War settled all that." The argument lacks merit. It is true that the right of interposition, or nullification, is related to the right of secession, but the War did not settle the *right*. It settled only a question of superior force.

Evidence supporting this contention may be found simply by examining the Constitution as the War began, and by examining the Constitution as the last of the three post-war amendments was ratified. These three amendments did nothing to change the location of sovereignty in our Union. Sovereignty (which is to say, the power that created the Constitution and the power that alone can amend it) rested, before the Civil War, in the people of the respective States; and it rests there today. The fundamental nature of the compact was not altered by so much as a shifted comma.

NOW, what is the specific argument — the particular infraction alleged — that provokes a move toward interposition today? It is the feeling of many persons in the Southern States that the Fourteenth Amendment never was intended to prohibit to the States the power to operate racially separate public facilities. It is pointed out that the very Congress which proposed the Amendment established separate schools in the District of Columbia; the very State Legislatures that ratified the amendment provided for separate schools in their jurisdictions. That this power had been reserved to the States was made plain by the Supreme Court in 1896 and again, by unanimous opinion, as recently as 1927. The clear understanding was

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that the Fourteenth Amendment prohibited the States from operating separate but *unequal* facilities; and in reliance upon this understanding, the States spent billions of dollars in developing school systems that, in the absence of such an understanding, never would have been developed at all.

Those who are advocating interposition agree that this long-accepted construction of the Constitution *can* be discarded; the States, if they wish, can prohibit to themselves not only the power to provide separate schools, but also the power to ban interracial marriages, the power to permit employers to set their own racial employment practices, and so forth. But the States themselves must do so — either tacitly, by accepting such constructions of the Constitution by the Court, or expressly, by ratifying a Constitutional amendment spelling out the prohibitions.

It is evident that many of the Southern States do not accept the Court's construction as a proper construction. Through a resolution of interposition, they could express their unwillingness tacitly to consent to the changed provision. They could ask their sister States to pass on the issue expressly, through Constitutional amendment. And here they could point out that of seven amendments to the Constitution adopted in this century, only two have required more than 14 months between submission and ratification. To settle the issue should not require an inordinate time.

Suppose our sister States refuse to consider the alleged infraction? Suppose Congress refuses even to propose a definitive amendment? In that event, we can only continue to protest that *as a matter of right* we ought not to be compelled to comply with Court orders that seem to us unconstitutional, and therefore null and void. As a matter of wrong, we may in the end have to comply; we offer no vain threats of civil war. When the day comes that a choice lies between the imprisonment of a school principal for contempt, or surrender to the Court, we will have no choice but to surrender; that is, to integrate a school or to abandon a school. But we will do what we can to make it clear that such surrender is not to right, but only to superior force; and we will protest that surrender in one instance does not prejudice our position as to every other instance.

All of this may come to nothing. We of the South are poignantly aware that in defending a practice of racial separation we are defending a practice that many persons regard as indefensible. We of the South know the sound reasons behind school segregation: that immense differences divide the races in the South, in terms of moral standards, educational aptitudes, customs and culture. We know these things, because we have been reared in a dual society and live intimately with them; but others do not know these things.

Our hope in espousing the doctrine of interposition is that others will see, as we have come to see so plainly, that Federal encroachments upon the reserved powers of the States far transcend the issue of schools or segregation. If this were a question under the commerce clause, or one that involved Federal authority over Tidelands, or some other contested question under the Constitution, Virginia at least would gladly agree to hear the disputed issue. Our General Assembly might vote one way, it might vote another; but in an event, we would do our share in the act of arbitrament — to say that a particular questioned power should be prohibited to the States, or should not be prohibited to the States, or that a questioned power has or has not been granted to our central government.

That is all the South is asking when it proposes to interpose State sovereignty against what seems to us a "deliberate, palpable and dangerous encroachment" on one of our most vital institutions.

If three-fourths of the states agree that this power to operate racially separate but equal schools should be prohibited to the States, then so be it. We will then meet the enormously difficult problems as best we can. But until this verdict is handed down, we can plead only that so violent a disruption in our long established customs, which we ourselves have been struggling desperately to resolve, should not be thrust upon us by judicial fiat alone, but should come as the sober, considered act of not fewer than three-fourths of the sovereign States.

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